IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION NO.34568 OF 2003
and
WPMP.NO.41992 of 2003

1. Integral Coach Factory,
rep. by its General Manager,
Chenai 600 038.

2. Senior Personnel Officer,
Integral Coach Factory,
Chennai 600 038.

3. Deputy Chief Personnel Officer/WS,
General Manager□s Office,
Personnel Branch, Integral Coach Factory,
Chennai 600 038. .. Petitioners

-Vs-

1. Velu Veerasamy,
2. V. Vemanna
3. B. Natarajan
4. K. Kumaran
5. R. Palani
6. J. Rajaiah
7. R. Radhakrishnan
8. G. Bakthavatshalam
9. M. Krishnamoorthy
10. P. Rajendran
11. The Central Administrative Tribunal,
Rep. by its Registrar, Chennai Bench,
Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.V. Radhakrishnan

For Respondents 2 to 10 : Mr.V. Prakash

:JUDGMENT

The present writ petition has been filed by the Integral Coach Factory, represented by its General Manager and two other Subordinate Officers against the order passed by the Central Administrative Tribunal dated 29.8.2003 in O.A.No.357 of 2003.

2. To appreciate the questions raised, it is necessary to notice the facts :-

Under the Electrical Engineering Department of Integral Coach Factory, there were employees in two Semi Skilled cadres in the pay scale of Rs.210-290. On 13.11.1982, Railway Board reclassified the Semi Skilled post and in respect of some trades such incumbents were classified as Skilled Grade III in the scale of Rs.260-400 and such incumbents were promoted as Artisans with effect from 1.8.1978 without undergoing any trade test as one time time exemption. Such re-classified employees in Skilled Gr.III also included those who passed trade test. On 9.4.1987 the Railway Administration directed that though semiskilled persons were promoted with effect from 1.8.1978, their seniority in the grade should be reckoned with effect from the date of passing of the trade test in Integral Coach Factory. Aggrieved by the aforesaid decision of the Board, two employees of the Integral Coach Factory filed O.A.Nos.239 and 226 of 1988 before the Central Administrative Tribunal claiming that their seniority should be counted from the date of fitment as Skilled Gr.III. Such OAs were allowed by the Central Administrative Tribunal on 24.8.1989 and the direction of the Tribunal was given effect to by the Integral Coach Factory. Subsequently, a batch of 45 employees filed O.A.Nos.26, 231 to 253, 497 to 500 , 514 to 529 and 1018 of 1991 claiming similar relief and the Tribunal by order dated 22.11.1991, granted such relief. However, at that stage, the Integral Coach Factory filed SLP.Nos.6457 to 6501 of 1993 before the Supreme Court. The Supreme Court, however, dismissed the SLPs at the admission stage itself and thereafter, the Integral Coach Factory implemented the order of the Tribunal and accordingly, arrears were paid. However, subsequently the Supreme Court allowed S.L. Ps relating to Central and Eastern Railway, where similar questions had been raised. At that stage, the Integral Coach Factory filed Review Petition Nos.1354 to 1398 of 1995 against the order of the SLP. Nos.6457 to 6501 of 1993. On 30.11.1998, the Supreme Court while allowing the Review Petitions observed that no recovery should be effected and the beneficiaries should not be reverted. As per the aforesaid decision of the Supreme Court, the Integral Coach Factory revised the seniority of 45 employees, but did not revert them nor reduced their scale. At the end of this exercise, 45 employees in respect of whom seniority was revised became juniors to the present respondents 1 to 10. However, as the present respondents 1 to 10 were drawing lesser pay than the 45 employees, who were declared to be juniors to them, they have filed O.A.No.642 of 2001 for a direction to the Integral Coach Factory to fix their pay on par with their junior and for a direction to promote them from the date on which they were due for promotion on the basis of consequential revision of seniority. They also claimed all consequential benefits.

By judgment dated 1.3.2002, the Central Administrative Tribunal allowed the O.A.No.642 of 2001 and directed that the present respondents 1 to 10 should be promoted on notional basis with effect from the date on which such promotion become due as per the revised seniority list with effect from 7.11.1996, when their immediate junior was promoted. The Tribunal further directed for fixation of pay on par with their immediate junior with actual benefits from the date of assumption of charge in the promotional post. Thereafter, the Integral Coach Factory passed orders revising the seniority of the present respondents 1 to 10 and granting proforma promotion on notional basis on par with immediate junior J Vijayan with effect from 7.11.1996 and paid arrears of pay from the date on which they assumed charge on the promotional post. However, the respondents 1 to 10 filed O.A.No.357 of 2003 before the Central Administrative Tribunal alleging that inspite of the direction of the Central Administrative Tribunal in earlier O.A.No.642 of 20 01, such persons were drawing lesser pay than their immediate junior Shri J. Vijayan. The Tribunal on hearing the both sides, accepted the claim of the present respondents 1 to 10 and directed the present petitioners to grant equivalent pay applicable to the applicants on par with J. Vijayan, as if they were placed in the higher cadre from 1.4.1981. The said order is being impugned by the present petitioners in the present writ petition.

3. The main contention raised by the learned counsel for the petitioners is to the effect that as per the decision of the Supreme Court, no recovery had been made in respect of the persons and because of such factual factor, the persons even though technically junior to the respondents 1 to 10 were drawing higher pay because of fortuitous circumstances, and there is no justification to grant higher pay to the present respondents 1 to 10.

4. We are afraid that the contention raised by the learned counsel appearing for the petitioner cannot be countenanced. The present writ petition is directed against the order passed by the Tribunal in O.A.No.357 of 2003. The said O.A. came to be filed only for the purpose of proper implementation of the order passed by the Tribunal in O. A.No.642 of 2001 disposed of on 1.3.2002. The decision in the O.A.No.642 of2001, had not been challenged by the present petitioners and in fact they had purported to implement the said decision. The only question therefore is whether the said decision had been properly implemented or not. The questions now raised and before the Tribunal in the subsequent O.A.No.357 of 2003 and reiterated in the present writ petition were available to be raised on the earlier occasion. While considering the rival contentions in the aforesaid O.A.No.642 of 2001, the Tribunal considered various aspects and observed : In other words, the applicants who are the seniors to the above said 45 employees cannot be deprived of their legitimate right for promotion on the date on which they became entitled to it. If there are no vacancies as contended by the respondents, in view of the peculiar facts and circumstances of the case namely the order of the Supreme Court directing the department not to revert the said 45 employees and not to recover the excess payment, the respondents are bound to give atleast notional promotion to the applicants herein and grant notional fixation of pay at par with their immediate junior. It is made clear that the applicants will be entitled to the actual benefit from the date

on which they assume duties and responsibilities of the promotional post. Accordingly, the respondents are directed to promote the applicants herein on notional basis from the date on which they fell due as per the revised seniority list i.e. w.e.f. 7.11.96, the date on which their immediate junior was promoted and grant them pay fixation on par with their immediate junior and grant actual benefits from the date of their assumption of charge of the promotional post.□ (emphasis added)

5. Whatever might have been the justification in the said decision, such order of the Tribunal was allowed to become final as the same was not challenged by the Department at that stage. In view of the clear direction given by the Tribunal in the said decision, we hardly see any justification in the stand now taken by the petitioners. The principle of constructive res judicata is squarely applicable.

6. For the aforesaid reasons, we do not find any merit in this writ petition, which is accordingly dismissed. No costs. Consequently, WPMP.No.41992 of 2003 is closed.

Index : Yes
Internet: Yes

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